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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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8 EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

9 Plaintiff,

10 ROBERT SANDERS,

11 Plaintiff-Intervenor,

12 v.

13 BIG 5 CORP.,

14 Defendant.  
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Case No. 2:17-cv-01098-RSM

ORDER DENYING PLAINTIFF-  
INTERVENOR ROBERT SANDERS'  
MOTION TO PRECLUDE EXPERT  
TESTIMONY

17 THIS MATTER comes before the Court on Plaintiff-Intervenor Robert Sanders' Motion  
18 to Preclude Expert Testimony. Dkt. #48. The Court considered the following:

- 19 1. Plaintiff-Intervenor Robert Sanders' Motion to Preclude Expert Testimony;  
20 2. Defendant Big 5 Corp.'s Opposition to Plaintiff-Intervenor Robert Sanders'  
21 Motion to Preclude Expert Testimony;  
22 3. Declaration of Francis L. Van Dusen in Support of Big 5 Corp.'s Opposition  
23 to Plaintiff-Intervenor Robert Sanders' Motion to Preclude Expert Testimony and the exhibits  
24 attached thereto;  
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1           4.       Declaration of Eric Olson in Support of Big 5 Corp.'s Opposition to  
2 Plaintiff-Intervenor Robert Sanders' Motion to Preclude Expert Testimony and the exhibits  
3 attached thereto; and

4           5.       Plaintiff-Intervenor Robert Sanders' Reply in Support of Motion to  
5 Preclude Expert Testimony.

6           Having fully considered the matter and the files and records herein, the Court  
7 hereby finds and ORDERS:

8           Plaintiff-Intervenor Robert Sanders' Motion to Preclude Expert Testimony (Dkt.  
9 #48) is DENIED without prejudice. The Court disagrees with Defendant that a meet and confer  
10 was required prior to Plaintiff filing the instant motion. Local Civil Rule 37(a)(1) requires a meet  
11 and confer prior to a motion to compel discovery or for a protective order. The instant motion was  
12 neither of those. However, for the reasons discussed by Defendant in its opposition, the Court  
13 finds that Defendant's untimely disclosure was justified under the circumstances of this case, and  
14 is harmless given that Plaintiff Sanders has had access to his own electronic devices throughout  
15 this matter, has significantly delayed in providing those devices to Defendant for examination,  
16 appears to have intentionally damaged those devices prior to providing them to Defendant's expert,  
17 and may depose the proposed expert once any opinions are offered. Moreover, at this time, it is  
18 not clear that the proposed expert will even be offered at trial in this matter.

19       DATED this 30th day of July, 2018.

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22 RICARDO S. MARTINEZ  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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